IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 116 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S. C.H.MOTORS PVT. LTD., NOWRENAMED AS C.H.ENG. PVT. LTD.,
Versus
PRAHLADBHAI MAHIPATBHAI PATEL

Appearance:
(MR.MOHIT S SHAH) for Petitioner No. 1
NOTICE SERVED for Petitioner No. 1
RULE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/02/2003

ORAL JUDGEMENT

1. This Revision Application is preferred by the original decree holder against original judgment debtors of the Execution Application No. 64/82 disposed of by

the learned Civil Judge (SD), Ahmedabad.

2. Brief facts reveal that the present petitioner filed a Civil Suit No. 71/72 in the Court of learned Civil Judge (SD), Ahmedabad (Rural) at Narol against the opponents herein. The said suit was decreed vide judgment and decree dated 30.6.1973. In pursuance of the said decree, the present petitioner - original plaintiff was directed to deposit in the court Rs.17,000/- for making payment to the defendants and the defendants were directed to execute sale deed of the suit property in favour of the plaintiff as per the terms of the agreement between the parties which was at Exh.19. In pursuance of the above decree, the present petitioner filed Dharkast Execution Application No.64/82 in the Court of learned Civil Judge (SD) at Ahmedabad (Rural). Present opponents being defendants on notice appeared before the Court and filed objections stating that after the decree in Special Civil Suit No. 71/72, fresh agreement was entered into between the parties in respect of the suit property and therefore the decree was not executable. It was also submitted by the judgment debtors - opponents that the execution application was barred by delay, latches, acquiescence and the provision of the Urban Land Ceiling Act, as then prevalent. It was also stated by the judgment debtors - present opponents that the Execution Application was not maintainable in its present form because the nature of the plaintiff was changed and the Execution Application was not verified and signed by the plaintiff. After hearing the parties, upholding some of the objections raised by the opponents - original judgment debtors, learned Second Joint Civil Judge (SD), Rural at Mirzapur vide his order dated 31.1.1989 dismissed the Execution Application No. 64/82, and being aggrieved, this Revision Application is filed.

3. This matter is of the year 1990 and six times was placed on final hearing board. This matter was placed on the Final Hearing of 13.1.2003 as well as again on the Final Hearing Board of 19.2.2003 at Sl. No.4. Learned Advocate representing the petitioner since was elavated to the Bench, Notice was served by the Office to the petitioner to appear in the matter in person or through attorney. However, the petitioner has failed to appear in response to the said notice while opponents are served.

4. On careful scrutiny of the order impugned in this matter, it appears that Executing Court negatived the contention of the opponents as to fresh agreement entered into the parties as well as the execution being barred by

delay, latches, acquiescence and by the provisions of the Urban Land Ceiling Act, but the learned Executing Court came to the conclusion that the suit originally was filed by M/s C.H. Motors Pvt. Ltd. and the entity of the plaintiff was changed in 1981. The learned Executing Court came to the conclusion that change in the name of the plaintiff company has not been brought by the decree holder on record nor full record of the adjustment has been given by the decree holder. Not only that, but the Executing Court came to the conclusion that the Execution Application was not verified as per the provisions of Order 21 Rule 11(2) of the Civil Procedure Code. The Executing Court therefore came to the conclusion that the Execution Application was not maintainable.

5. Having gone through the reasoning given by the Executing Court for dismissing the Execution Application, it clearly transpires that the Executing Court has not committed any jurisdictional error nor material irregularity nor illegality in coming to the conclusion. In revisional jurisdiction, this Court is not inclined to interfere with the impugned order, for the above reasons.

6. In this view of the matter, this Revision Application is dismissed. Rule is discharged. No order as to costs.

(J.R. Vora, J.)

p.n.nair